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Letter dated 3 March 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/524).

The Counter-Terrorism Committee has received the attached third report from Japan submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the text of the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 29 January 2003 from the Permanent Representative of Japan to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Representative of Japan to the United Nations presents his compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and, pursuant to paragraph 6 of that resolution and in response to the latter's letter dated 30 October 2002, has the honour to transmit herewith the third report of the Government of Japan on the steps it has taken to implement the resolution (see enclosure).

Enclosure

Second additional report to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) of 28 September 2001

1. The Government of Japan is providing the following additional information in response to the comments/questions posed in the letter of Ambassador Jeremy Greenstock, Chairman of the Counter-Terrorism Committee, dated October 30, 2002 (S/AC.40/2002/MS/OC.174).

●Sub-paragraph 1.2

□*Effective implementation of paragraph 1 of the Resolution requires that the legal obligation to report suspicious transactions to which banks and financial institutions are subject to should extend to all professions engaged in financial transactions (such as lawyers and accountants), and that they should all be subjected to penalties for non-compliance in order to enable the effective prevention of the financing of terrorism. Could Japan please comment on the action it intends to take in this regard, particularly in the context of the reply given in the supplementary report to sub-paragraph 1(a) ("...although no penalty will be imposed.").*

2. Whether the obligation of suspicious transactions reporting (STR) should be imposed on attorneys, certified public accountants and other professions is currently under discussion in the course of the current review of Financial Action Task Force (FATF) Forty Recommendations.

3. However, in the case of attorneys, as it is their right and duty to maintain confidentiality of any fact they learn in the performance of their duties as lawyers, imposing on them an obligation to report suspicious financial transactions to government authorities and a penalty for non-compliance would cause serious problems, including damage to reliable, trusting relation between lawyer and client.

●Sub-paragraph 1.3

□*Effective implementation of this paragraph also requires the existence of legal provisions or administrative measures that ensure that funds and other economic resources*

collected by non-profit organizations (eg religious, charitable or cultural organizations) are not diverted for other than the stated purposes, particularly for financing of terrorism. Please explain whether such provisions or measures are in place in Japan and, if not, how Japan proposes to monitor the use of funds etc by non-profit organizations.

4. Under the provision of Paragraph 1 of Article 41 of "The Law to Promote Certain Non-profit Activities" (hereinafter referred to as "the Non-profit Activities Law"), if a competent authority has an appropriate reason to suspect that a corporation that conducts certain non-profit activities has violated domestic laws and regulations, administrative orders based on the domestic laws and regulations or articles of incorporation of the corporation, the authority may ask the corporation to submit a report on its activities or finances, and it may perform an on-the-spot inspection of the offices and other facilities of the corporation and inspect the activities, properties, books, documents or other objects of the corporation.

5. Please note that Paragraph 2 of Article 2 of the Non-profit Activities Law stipulates that the term "corporation that conducts certain non-profit activities" refers to any organization whose main objective is the performance of non-profit activities, which satisfies both 1 and 2 noted below, and which is incorporated in accordance with the provisions of the Non-profit Activities Law.

1. Organizations that fulfill both of the following criteria and do not aim to make a profit

a) Organizations that do not attach unjust requirements to gaining or losing membership status

b) Organizations at which one-third or fewer of all officers receive remuneration

2. Organizations whose activities meet the following conditions:

a) The main purpose of the activities is not the spread of religious doctrine, the performance of religious services or rituals, or preaching

b) The main purpose of the activities is not the promotion or support of or opposition to political principles

c) The purpose of the activities is not the recommendation or support of or opposition to a candidate for a certain public office (including a person who

aims to be a candidate for said office), a public official, or a political party.

6. Further, please note that Paragraph 1 of Article 11 of the Non-profit Activities Law stipulates that the following particulars shall be stated in the "articles of incorporation" of "corporation that conducts certain non-profit activities":

1. The object;
2. The name;
3. The type of certain non-profit activities and the type of projects regarding the said activities;
4. The seat of the principal office and seats of other offices;
5. Provisions as to the acquisition and loss of qualifications for membership;
6. Provisions concerning directors;
7. Provisions concerning meetings;
8. Provisions concerning its finances;
9. Provisions concerning its accounts;
10. Provisions as to types and other particulars of its profit activities in case the corporation conducts profit activities;
11. Provisions concerning its termination;
12. Provisions concerning alteration of its articles of incorporation;
13. The manner in which the corporation is to give its public notices;

●Sub-paragraph 1.4

□*According to the supplementary report (paragraph 9), Japan can "block assets of non-resident persons" and "restrict payments from Japan to foreign countries or payments between residents and non-residents". Please outline the basis and procedures for blocking the transfer of funds and other financial assets or economic resources between resident natural or legal persons.*

7. In June 2002, the "Act on Punishment of Financing to Offences of Public Intimidation" (hereinafter referred to as "the Act") was enacted as a measure to implement the International Convention for the Suppression of the Financing of Terrorism. Under this Act, financing of terrorism was criminalized and included in the list of predicate offences in the Anti-Organized Crime Law.

8. It became possible thereafter to regard funds collected or provided in order to carry out terrorism acts as crime proceeds, and to secure the funds for confiscation and collection of equivalent value. Financial institutions are also required by the Anti-Organized Crime Law to report to the Japanese Financial Intelligence Office (JAFIO) transactions that they suspect are related to financing of terrorism. The JAFIO classifies and analyzes the information on the reported suspicious transactions, and provides law enforcement authorities with information relevant to their investigation.

9. In this regard, the Government of Japan can take necessary measures to secure funds related to financing of terrorism transferred between resident natural or legal persons.

●Sub-paragraph 1.5

□ *"The Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder" (Law No. 147 of 1999) and the "Subversive Activities Prevention Act" (Law No. 240 of 1952) might not be sufficient to effectively implement the obligation to suppress the recruitment of members of terrorist groups set forth in sub-paragraph 2 (a) of the Resolution for the following reasons, in particular:*

- *The obligation in paragraph 2(a) is unconditional; it is therefore irrelevant whether the groups in question have already committed terrorist acts in the past.*

- *The term "terrorist group" is not identical either with the term" organization of which officials or members had carried out indiscriminate mass murder" or with the term "organization which shall have carried out any terroristic subversive activity" as defined by Japanese law.*

- *As stated in the supplementary report, the purpose of the two above mentioned Acts "is the securing of public safety in Japan, and these Acts are not directly applicable to terrorist groups and terrorists abroad". However, the obligation under the Resolution to suppress the recruitment of members of terrorist groups also applies to terrorist*

groups operating outside Japan.

Effective implementation of this sub-paragraph requires that provisions specifically criminalising the recruitment of members of terrorist groups are in place. Please could Japan comment on the action it intends to take in this regard.

10. The Chairman of the Counter-Terrorism Committee has pointed out that the Subversive Activities Prevention Act and the Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder might not be sufficient to effectively implement the obligation to suppress the recruitment of members of terrorist groups set forth in sub-paragraph 2 (a) of United Nations Security Council Resolution (UNSCR) 1373. The Chairman provided the following three reasons:

first, the obligation in paragraph 2 (a) is unconditional; it is therefore irrelevant whether the groups in question have already committed terrorist acts in the past;

second, the term "terrorist groups" used in UNSCR 1373 is different from *"organization which shall have carried out any terroristic subversive activity,"* as defined in the Subversive Activities Prevention Act, or *"organization of which officials or members have carried out indiscriminate mass murder,"* as defined in the Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder;

third, the purpose of the two above mentioned Acts *"is the securing of public safety in Japan, and these Acts are not directly applicable to terrorist groups and terrorists abroad"*; however, the obligation under the Resolution to suppress the recruitment of members of terrorist groups also applies to terrorist groups operating outside Japan.

11. Regarding the Chairman's first and second comments above mentioned, the Government of Japan considers it possible to implement subparagraph 2 (a) of the Resolution in an appropriate manner by applying the two above mentioned Acts, because most terrorist groups have carried out indiscriminate mass murder in the past, and are likely to be recognized as "groups having carried out any terrorist subversive activities" or "groups having committed indiscriminate mass murder" "as their group activities."

12. Moreover, as Japan reported before, concerning criminalization of recruitment of members of terrorist groups, such recruitment activities by groups that are considered as "terrorist organizations" under these acts are banned, and violations of the ban are punished under these acts.

13. Regarding the third comment of the Chairman, it is true that the two above mentioned Acts may not cover all terrorist groups due to the specific purpose of these Acts.

14. Under the current legal system, the Government of Japan intends to fulfill its obligation of suppressing recruitment of members of terrorist groups and terrorists abroad by taking the following measures:

(1) Not issuing visas to members of terrorist groups;

(2) Rejecting requests for landing permission from members of terrorist groups by application of provisions of the Immigration Control and Refugee Recognition Act including Article 5, which prescribes grounds for rejection of landing such as infringement of national interest and security.

15. Furthermore, considerations by the relevant governmental authorities are under way to find possible and effective measures to further regulate terrorist groups' recruitment activities.

●Sub-paragraph 1.6

□ *Please outline the competencies of the Counter-terrorism Cooperation Division which, according to the website of the Ministry of Foreign Affairs of Japan (http://www.mofa.go.jp/policy/terrorism/division.html), was established in order to deal "with the overall coordination of all activities relating to counter-terrorism policy", for the implementation of the Resolution.*

16. International Counter-Terrorism Cooperation Division was established in the Ministry of Foreign Affairs (hereinafter referred to as "the Ministry") on 12 December 2001. As CTC has pointed out, the Division deals with the overall coordination of all

activities relating to counter-terrorism policy in the Ministry, including policy planning and cooperation on counter-terrorism in the UN framework.

17. The International Counter-Terrorism Cooperation Division works with other government authorities to ensure that the requirements of UNSCR 1373 are appropriately implemented.

18. Since the UN Policy Division is in charge of UN issues in the Ministry, this Division compiles and submits Japanese reports concerning the implementation of UNSCR 1373. In the course of drafting these reports, the UN Policy Division works closely with the International Counter-Terrorism Cooperation Division.

●Sub-paragraph 1.7

□ *Please outline the legal provision that criminalises the use of the Japanese territory for the purpose of financing, planning, facilitating or committing terrorist acts against other states or their citizens. Effective implementation of sub-paragraph 2(d) and (e) of the Resolution requires that such a provision should be incorporated in the penal law of Japan.*

19. Japan has already ratified and implemented all of the 12 anti-terrorism conventions, and terrorist acts prescribed under these conventions have already been criminalized under Japanese laws.

20. Therefore, a person who finances, plans, facilitates, or commits terrorist acts inside the territory of Japan shall be punished under the jurisdiction of Japan, even if the targets of such terrorist acts are other states or their citizens.

21. For example, a person who finances terrorist acts inside the territory of Japan shall be punished under Articles 2 and 3 of the Act on Punishment of Financing to Offences of Public Intimidation, even if the targets of such terrorist acts are other states or their citizens.

●Sub-paragraph 1.8

☐ *In cases to which Article 4-2 of the Penal Code is not applicable, will Japan extradite foreigners and stateless persons who have committed one of the acts listed in sub-paragraph 2 (e) of the Resolution outside its territory, but who are currently in Japan in order to ensure that those persons are brought to justice as required by this sub-paragraph?*

22. Japan can extradite to a requesting state in accordance with the Law of Extradition, persons, including foreigners and stateless persons, who have committed terrorist acts prescribed under the relevant anti-terrorism conventions outside Japanese territory.

On the other hand, Article 4-2 of the Penal Code embodies the principle of "auto dedere, auto judicare," and it enables Japan to apply its Penal Code to those, including foreigners and stateless persons, who have committed such terrorist acts outside Japanese territory, but who are currently in Japan in cases where Japan does not extradite them.

Thus, through the combination of these measures, Japan can ensure that those persons are brought to justice either by extradition or by application of its own Penal Code as requested in this Resolution.